IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1571

GLENN WOO,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DAVID J. LEVENSON
FINKELSTEIN, THOMPSON & LEVENSON
1800 M Street, N.W.
Washington, D.C. 20036
Counsel for Petitioner

Of Counsel:

BURTON H. FINKELSTEIN
GARY E. SHOFFNER
FINKELSTEIN, THOMPSON & LEVENSON
1800 M Street, N.W.
Washington, D.C. 20036

Washington, D.C. • THIEL PRESS • (202) 638-4521

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No.

GLENN WOO,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Glenn Woo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered January 15, 1979.

OPINIONS BELOW

The judgment of the Court of Appeals entered January 15, 1979, affirming per curiam without opinion the order of the Securities and Exchange Commission under review, is not reported; a copy of the judgment is reproduced as Appendix A to this petition.

Orders of the Court of Appeals entered February 12, 1979, denying Woo's petition for rehearing and his suggestion for rehearing en banc, are not reported; copies of the orders are reproduced as Appendix B to this petition.

The order of the Commission under review, together with the underlying opinion, are set forth in Securities Exchange Act Release No. 13982 (September 22, 1977); copies of the order and opinion are reproduced as Appendix C to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered January 15, 1979. The orders of the Court of Appeals denying Woo's petition for rehearing and his suggestion for rehearing en banc were entered February 12, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

This case presents an exceptionally important question of federal law which has not been, but should be, settled by this Court, concerning the proper standard to be applied to the finding required of the Commission by Section 15(b)(6) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. § 78o(b)(6), that any sanction imposed as to a person associated with a broker or dealer is in the public interest. This exceptionally important question, affecting more than 29,000 persons associated with more than 5,700 registered broker-dealers,[1] was

[1] According to the 1977 Annual Report of the Commission, the latest available published statistical information, as of September 30, 1977, there were 5,756 registered brokers and dealers with

[footnote continued]

ignored by the Commission and overlooked by the Court of Appeals in this case, and has not been settled by any court. The question presented for review is:

Whether an order of the Commission sanctioning an associated person in a proceeding under Section 15(b)(6) must be set aside as arbitrary and capricious where the underlying opinion of the Commission fails to articulate what standard was applied to the finding required of the Commission by Section 15(b)(6) that the sanction imposed is "in the public interest," or what weight or consideration was given to the undisputed evidence on the record as to the pertinent public interest factors.

In the terms and circumstances of the case, the statement of the question presented, as to the Commission's failure to articulate the requisite factual and legal bases for its sanction, includes the subsidiary question: Whether the "clear and convincing" standard should be applied to the finding required of the Commission by Section 15(b)(6) that the imposition of a sanction is "in the public interest," where the sanction amounts to a deprivation of livelihood of an associated person.[2]

29,030 directors, officers, trustees and all other persons occupying similar status or performing similar functions; and, there were 93 administrative proceedings instituted against broker-dealers and their principals during the fiscal year ended September 30, 1977. 1977 SEC ANN. REP. 289 [Table 4B] and 325 [Table 32], U.S. Government Printing Office (1978).

[2] *See Nassar & Co., Inc. v. SEC*, 566 F.2d 790 (D.C.Cir. 1977); *Collins Securities Corp. v. SEC*, 562 F.2d 820 (D.C.Cir. 1977); *cf. Woodby v. Immigration & Naturalization Service*, 385 U.S. 276 (1966).

STATUTES INVOLVED

This case involves Section 15(b)(6) of the 1934 Act, 15 U.S.C. § 78o(b)(6), the pertinent provisions of which are set forth in Appendix D.

STATEMENT OF THE CASE

This case arises out of a hearing held in late 1975 and early 1976 by the Commission under Section 15(b)(6) to determine whether Woo, an officer and 50% equity owner of a registered broker-dealer,[3] had been enjoined in *SEC v. Cooper,* 73 Civ. 2508 (S.D.N.Y.) and had violated the registration and antifraud provisions of the Securities Act of 1933 and the 1934 Act, from about March 1971 to about February 1972, in connection with the offer, purchase and sale of Meridian Fast Food Services, Inc. securities (as litigated in the *Cooper* case), and if so, what if any sanction is appropriate in the public interest. The sole matter remaining at issue at hearing was the public interest, since Woo admitted the entry of the injunctive order and the violations alleged.

At hearing, the Commission's Division of Enforcement addressed itself to its burden of proof on the public interest question[4] merely by introducing the record of the *Cooper* case, the injunctive orders entered against

[3]The broker-dealer also was a respondent in the proceeding. Pursuant to an offer of settlement, the Commission suspended the broker-dealer's registration for 30 days (rather than for 60 days recommended by the hearing officer in his initial decision) and imposed certain other requirements (all of which have been satisfied). *Amswiss International Corp.,* Securities Exchange Act Release No. 13011 (November 26, 1976).

[4]*See* II L. LOSS, SECURITIES REGULATION 1328 (2d ed. 1961).

Woo in the *Cooper* case and in *SEC v. D'Onofrio,* 72 Civ. 3507 (S.D.N.Y.) (violations of the registration and antifraud provisions involving Galco Leasing Systems, Inc. securities in early 1971), and the trial courts' opinions in those cases.

At hearing, Woo did not rely solely upon his own assertions that there was no risk of danger or harm to the investing public at his hands by his continuing in the securities business in the manner and under the circumstances he had been doing so during the about five (now about eight) year period since the admitted misconduct in 1971. Rather, during seven days of hearing, Woo affirmatively addressed himself to the public interest question by and through the testimony of 20 witnesses representing virtually every facet of the securities business and the public. The Division did not call a single witness to challenge or refute the testimony of these witnesses; nor did it come forward with even a scintilla of evidence to rebut or controvert the affirmative showing made by Woo.

The undisputed evidence on the record at hearing established—and the hearing officer unequivocally found—that since the admitted misconduct in 1971: (1) Woo (and the broker-dealer) has (have) established an unblemished record of affirmative compliance with the requirements, rules, regulations and policies of the Commission and the various self-regulatory organizations (the Boston Stock Exchange, the National Association of Securities Dealers, Inc. and the National Clearing Corp.); (2) Woo enjoys exemplary professional reputations for honesty, integrity and reliability, and for observing proper business practices and procedures, within the securities industry, including the financial and banking

communities; and (3) Woo has observed and enjoys a reputation for the highest personal standards of honesty, integrity, social involvement and civic responsibility in his community.

In its opinion upon review of the hearing officer's thirty-nine page initial decision, the Commission merely summarized and quoted from the *Cooper* and *D'Onofrio* trial courts' opinions as to the violations in 1971 admitted by Woo at hearing, and then concluded that "Woo's conduct was extremely serious."[5] The Commission also concluded that Woo's "lack of candor" in his testimony in the *Cooper* case, based solely upon the trial court's characterization, "compounds the gravity of his offenses."[6]

In its opinion, despite the undisputed evidence on the record at hearing and the unequivocal findings of the hearing officer as to Woo's affirmative compliance with and observance of the highest professional and personal standards of conduct during the about five (now about eight) year period since the admitted misconduct in 1971, the Commission merely indicated, "Woo *asserts* that since the time of his admitted misconduct, he and [the broker-dealer] have established an unblemished record of compliance with regulatory requirements," then merely noted, "*Numerous witnesses testified* to Woo's good character, honesty and reliability," and then merely observed, "*Much was said* about [the broker-dealer's] unique marketmaking function, and about [its] need for Woo."[7]

[5] Appendix C at 2-3, 4.

[6] *Ibid.*

[7] *Id.* at 4 (emphasis added).

Apparently, solely on the basis of its finding his admitted misconduct in 1971 extremely serious and grave, the Commission barred Woo from association with any broker or dealer (with the proviso that after a total exclusion of 18 months he may become so associated with certain limitations upon his activities); permitting him to retain his equity interest in the broker-dealer and to receive dividends thereon during the period of exclusion; but precluding his collecting any salary or participating in the activities of the broker-dealer during that period.[8]

Upon review pursuant to Section 25(a) of the 1934 Act, 15 U.S.C. § 78y(a), the Court of Appeals entered judgment affirming per curiam without opinion the order of the Commission.

REASONS FOR GRANTING THE WRIT

This case squarely presents an exceptionally important question of federal law which was ignored by the Commission and overlooked by the Court of Appeals: construction of the Congressional mandate of Section 15(b)(6) of the 1934 Act, that the Commission may sanction an associated person who has engaged in any of the misconduct listed only if it finds on the record at hearing that the sanction is "in the public interest." This fundamental question, which has not been settled by any court, is so substantial as to require settlement by this Court. Unless the necessary judicial determination is made by this Court, in accordance with and in furtherance of the traditional judicial review function,[9] the

[8] *Id.* at 4-5, 6.

[9] *See SEC v. Sloan*, 436 U.S. 103, 118 (1978); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197-201 (1976); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *Collins Securities Corp. v. SEC*, 562 F.2d 820, 823-824 (D.C.Cir. 1977).

Congressional mandate of Section 15(b)(6) will be frustrated and the more than 29,000 persons associated with more than 5,700 registered broker-dealers[10] and subject to that statutory provision will be adversely affected.

Congress provided in Section 15(b)(6) that the Commission may impose as to a person associated with a broker or dealer any of the sanctions specified if it "finds, on the record after notice and opportunity for hearing, that such [sanction] is in the public interest" and that the associated person has engaged in any of the misconduct listed. It is clear from the plain meaning of the statutory language "in the public interest," as well as from the forms of remedy authorized by Congress, that imposition of a sanction by the Commission as to an associated person is not a penalty, but a remedial measure.[11] It also is clear from pertinent judicial and administrative decisions that the proper public interest standard is protection of the investing public from future harm at the hands of the associated person.[12]

At the hearing in this case, the only matter at issue was the public interest. It is clear from the face of the statute, then, that in accordance with the Congressional mandate of Section 15(b)(6), the Commission had authority to sanction Woo only if it found on the record that doing so was in the public interest—as necessary to

[10] Note 1, *supra*.

[11] *E.g., Collins Securities Corp. v. SEC*, 562 F.2d 820, 825-826 (D.C.Cir. 1977); *Beck v. SEC*, 430 F.2d 673, 674 (6th Cir. 1970). *Accord, Richard C. Spangler, Inc.*, Securities Exchange Act Release No. 12104 (February 12, 1976).

[12] Authorities cited in Note 11, *supra*, and in Note 13, *infra*.

protect the investing public from future harm at Woo's hands.

A careful examination of the opinion underlying its order, however, clearly shows that the Commission utterly failed to articulate what standard it applied to the public interest finding required by the plain meaning of Section 15(b)(6), or what weight or consideration it gave to the well-established public interest factors on the record.[13] That examination also makes clear that in imposing the extreme sanction as to Woo, amounting to a deprivation of livelihood, the Commission simply ignored the undisputed evidence on the record at hearing and merely gave lip service recognition to the public interest and judicial review standards mandated by Congress and enunciated by pertinent judicial and administrative decisions. Indeed, that examination compels the conclusion that the purportedly remedial

[13] It is well-established that under Section 15(b)(6), determination of the remedial action which is necessary and appropriate in the public interest requires a weighing of all relevant facts and circumstances on the record bearing upon the public interest, and involves a balancing of the risk to the investing public of probable future misconduct by an associated person and the hardship inherent in denying that person the opportunity of continuing in the securities business. *E.g., Beck v. SEC*, 430 F.2d 673 (6th Cir. 1970); *see SEC v. Sloan*, 436 U.S. 103 (1978). It also is well-established that the pertinent public interest factors to be considered are the character of the associated person's misconduct, his activities since that past misconduct, his personal and professional reputations, the risk that the past or similar misconduct will be repeated by him, and the danger to the investing public of not excluding him from the securities field. *E.g., Beck v. SEC*, 430 F.2d 673 (6th Cir. 1970); *Richard C. Spangler, Inc.*, Securities Exchange Act Release No. 12104 (February 12, 1976). *See also Applications for Relief from Disqualification*, Securities Exchange Act Release No. 11267 (February 26, 1975).

sanction imposed as to Woo must be considered unlawfully punitive, in that it serves no purpose other than to punish him for his prior misconduct.

Thus, the Commission imposed the severe sanction as to Woo solely on the basis of its finding his admitted misconduct about five (now about eight) years earlier extremely serious and grave.[14] In doing so, the Commission obviously gave virtually no weight and little or no consideration to the undisputed evidence on the record at hearing as to the pertinent public interest factors. That undisputed evidence, introduced by and through the testimony of 20 witnesses, clearly and convincingly established that the public is not – and since 1971 has not been – exposed to any risk of harm at Woo's hands, but rather has benefitted significantly from his affirmative compliance with and observance of the highest standards of personal and professional conduct. Indeed, the Commission's merely acknowledging in its opinion that "Woo asserts," "numerous witnesses testified" and "much was said," makes a mockery of the hearing mandated by Congress to provide a basis for the imposition of any sanction.

Simply stated, despite the plain meaning of the Congressional mandate of Section 15(b)(6) that the Commission may sanction an associated person who has engaged in any of the misconduct listed only if it finds on the

[14] Woo does not contend that the trial courts' descriptions of his testimonial demeanor are not entitled to any weight. Rather, Woo asserts that their opinions do not provide a reasonable or realistic basis for the Commission's virtually ignoring the undisputed evidence on the record at hearing with respect to his exemplary personal and professional conduct and reputations. *See Kivitz v. SEC*, 472 F.2d 956 (D.C.Cir. 1973); *Klopp v. SEC*, 427 F.2d 455 (6th Cir. 1970).

record that the sanction is in the public interest, what standard was applied to the required public interest finding or what weight or consideration it gave to the undisputed evidence on the record as to the pertinent public interest factors, are mysteries. The Commission's failure to articulate the requisite legal and factual bases for its sanctioning Woo requires that its order be set aside as arbitrary and capricious.[15]

As Mr. Justice Frankfurter stated in a case involving similar abdication of responsibility by the Commission:

> The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the Act. There must be a finding . . . . For the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review.[16]

The plain meaning of the Congressional mandate of Section 15(b)(6) compels the conclusion that the opinion underlying the Commission's sanction as to Woo is materially deficient for its failure to address the public interest question in the manner explicitly required by the statute itself, as well as by pertinent judicial and

[15] *Beck v. SEC*, 430 F.2d 673 (6th Cir. 1970); *Beck v. SEC*, 413 F.2d 832 (6th Cir. 1969); *Berko v. SEC*, 297 F.2d 116 (2d Cir. 1961). *See Nassar & Co., Inc. v. SEC*, 566 F.2d 790 (D.C. Cir. 1977); *Collins Securities Corp. v. SEC*, 562 F.2d 820 (D.C. Cir. 1977).

[16] *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943), *quoted with approval in Beck v. SEC*, 413 F.2d 832, 834 (6th Cir. 1969). In *Brown v. Allen*, 344 U.S. 443, 496 (1953), Mr. Justice Frankfurter also stated: "Discretion without a criterion for its exercise is authorization of arbitrariness."

administrative decisions. Speculation and conjecture obviously are not acceptable substitutes for the specific public interest finding required by Section 15(b)(6).

As Mr. Justice Rehnquist pointed out in a recent case involving similar arbitrary and capricious action by the Commission:

> This lack of specific attention to the statutory authorization is especially important in light of this Court's pronouncement in *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), that one factor to be considered in giving weight to an administrative ruling is "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[17]

Mr. Justice Rehnquist then pointed out that:

> [T]he courts are the final authorities on issues of statutory construction, . . . and are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.[18]

The judgment of the Court of Appeals in this case, affirming per curiam without opinion the order of the Commission sanctioning Woo, overlooked the well-settled principles of judicial review cited by Mr. Justice Frankfurter and by Mr. Justice Rehnquist.

---

[17] *SEC v. Sloan*, 436 U.S. 103, 117-118 (1978), *quoting with approval Adamo Wrecking Co. v. United States*, 434 U.S. 275, 287 n.5 (1978).

[18] *SEC v. Sloan*, 436 U.S. 103, 118 (1978), *quoting with approval Volkswagenwerk v. Federal Maritime Comm'n*, 390 U.S. 261, 292 (1968) (citations omitted).

The courts have the supervisory power and responsibility to assure that Woo and all other associated persons subject to Section 15(b)(6)[19] are treated fairly and justly by the Commission in its administration of the regulatory scheme authorized by Congress. The exceptionally important question concerning the proper standard to be applied to the finding required of the Commission by Section 15(b)(6) that any sanction imposed as to an associated person is in the public interest, was not addressed by the Commission in its opinion in this case and was overlooked by the Court of Appeals upon review, and indeed has not been settled by any court. This case squarely presents that crucial question of statutory construction for settlement by this Court, in accordance with the traditional supervisory power and responsibility of the judiciary.

---

[19] Note 1, *supra*.

CONCLUSION

For the reasons set forth herein, Woo respectfully submits that his petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit should be granted.

Respectfully submitted,

DAVID J. LEVENSON
FINKELSTEIN, THOMPSON & LEVENSON
1800 M Street, N.W.
Washington, D.C. 20036
Counsel for Petitioner

BURTON H. FINKELSTEIN
GARY E. SHOFFNER
FINKELSTEIN, THOMPSON & LEVENSON
1800 M Street, N.W.
Washington, D.C. 20036
Of Counsel

April 13, 1979

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1978

No. 77-1988

[Filed: January 15, 1979]

GLENN WOO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

PETITION FOR REVIEW OF AN ORDER OF THE SECURITIES AND EXCHANGE COMMISSION

Before: BAZELON and ROBB, Circuit Judges, and BRYANT,* Chief Judge, United States District Court for the District of Columbia.

JUDGMENT

This cause came on to be heard on a petition for review of an order of the Securities and Exchange Commission and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. See Local Rule 13(c). On consideration of the foregoing, it is

---

*Sitting by designation pursuant to 28 U.S.C. § 292(a).

ORDERED AND ADJUDGED by this Court, that the order of the Securities and Exchange Commission under review herein is hereby affirmed.

Per Curiam
For the Court

/s/ George A. Fisher
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1978

No. 77-1988

[Filed: February 12, 1979]

GLENN WOO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

BEFORE: Wright, Chief Judge; Bazelon, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb, and Wilkey, Circuit Judges

ORDER

This suggestion for rehearing *en banc* filed by petitioner Glenn Woo, having been transmitted to the full Court and no judge having requested a vote with respect thereto, it is

ORDERED, by the Court, that petitioner's aforesaid suggestion for rehearing *en banc* is denied.

Per Curiam
FOR THE COURT:

/s/ George A. Fisher
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1978

No. 77-1988

[Filed: February 12, 1979]

GLENN WOO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

BEFORE: Bazelon and Robb, Circuit Judges; Bryant,* Chief Judge, United States District Court for the District of Columbia

ORDER

Upon consideration of the petition for rehearing filed by petitioner Glenn Woo, it is

ORDERED, by the Court, that petitioner's aforesaid petition for rehearing is denied.

Per Curiam
FOR THE COURT:

/s/ George A. Fisher
Clerk

*Sitting by designation pursuant to Title 28 U.S.C. § 292(a).

APPENDIX C

[1]*

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

[Mailed for Service: Sept. 23, 1977]

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 13982 / September 22, 1977
Admin. Proc. File No. 3-4733

In the Matter of

GLENN WOO
1 Exchange Place
Jersey City, New Jersey

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Sale of Unregistered Securities

Manipulation

Injunction

Where president of registered broker-dealer admittedly violated registration and antifraud provisions by participating in a manipulative scheme to inflate the price of a security and, as a result thereof, was enjoined from further violations of those provisions, and where president had also been so enjoined on the basis of his participation in another manipulative scheme involving a different security, *held*, in public interest

*The page numbers of the order and opinion are indicated in brackets.

to restrict president's association with any broker or dealer.

APPEARANCES:

Burton H. Finkelstein, David J. Levenson and *John F. McCarthy III,* of Finkelstein, Thompson & Levenson, for Glenn Woo.

William D. Moran, Jeffrey H. Tucker, Douglas P. Jacobs and *Andrew E. Goldstein,* of the New York Regional Office of the Commission, for the Division of Enforcement.

I

Glenn Woo, president and 50% owner of Amswiss International Corp., a registered broker-dealer,[1] and our Division of Enforcement appeal from the sanction imposed on Woo by an administrative law judge. The judge barred Woo from association with any broker or dealer with the proviso, however, that, after 18 months, he could apply to become so associated in connection with back office operations.

II

The order instituting these proceedings alleges that, in an action brought by this Commission based on Woo's dealings in the stock of Meridian Fast [2] Food Services, Inc.,[2] Woo was permanently enjoined from violations of registration and antifraud provisions of the securities acts. The order also charges Woo with the underlying

[1]Pursuant to its offer of settlement in these proceedings, Amswiss's broker-dealer registration was suspended for 30 days. Securities Exchange Act Release No. 13011 (November 26, 1976), 11 SEC Docket 1054.

[2]Meridian was subsequently merged into Radiation Service Associates, Inc.

violations that led to the injunctive judgment. At the outset of these proceedings, Woo admitted the allegations against him. Hence, the only question presented is: What sanction, if any, should be imposed?

III

At the instance of this Commission, two courts, after trial, issued permanent injunctions against Amswiss and Woo in 1975. Both courts found that the defendants had violated registration and antifraud provisions of the securities acts through their participation in manipulative schemes engineered by one Ramon D'Onofrio. One of the schemes involved the stock of Galco Leasing Systems, Inc., and the other, the stock of Meridian. The courts' findings[3] may be summarized as follows.[4]

[3]The findings are reported in *S.E.C. v. D'Onofrio,* CCH Fed. Sec. L. Rep. (1975-1976 Transfer Binder), ¶95,201 (Galco manipulation), and in *S.E.C. v. Cooper,* 402 F.Supp. 516 (S.D. N.Y., 1975) (Meridian manipulation).

[4]Woo complains that the administrative law judge improperly considered certain evidence introduced by the Division concerning the Galco and Meridian manipulations, and other evidence allegedly outside the scope of the order for proceedings concerning Woo's relationship with D'Onofrio and his dealings in stocks other than Galco and Meridian. Whatever the merits of Woo's position, we have determined not to consider any of the challenged evidence in making our determination herein.

Woo also moves to dismiss these proceedings on the ground that our staff failed to inform him, prior to his testimony, that it had referred the Meridian matter to the United States Attorney for possible criminal prosecution. In the alternative, he asks that these proceedings be stayed pending further inquiry by him and by us into our staff's conduct, and that the staff members in question be disqualified from further participation in this case. But, since Woo was in no way prejudiced by the action of our staff, his requests are without merit. The United States Attorney determined not to prosecute Woo. And we have made no findings against Woo on the

[footnote continued]

The Galco manipulation took place in early 1971. Its first stage involved the purchase by D'Onofrio, through his account at a Swiss bank, of restricted Galco stock from Galco insiders. This was followed by the sale of the shares, now supposedly free of restrictions, to pre-arranged buyers and then to the public at prices which had been artificially inflated. With respect to Woo, the court stated:

> "Woo was a knowing participant in the scheme to cross the [insiders'] shares into D'Onofrio's account [at the bank] at a substantial discount. After accomplishing [this] through Amswiss . . ., D'Onofrio and Woo set out to manipulate Galco's price up to the level at which they hoped to distribute the shares on the market . . . . In summary, . . . [3] Amswiss and Woo participated in a scheme with D'Onofrio to manipulate upward the price of an essentially worthless security for the purposes of inducing third-party purchases and distributing their Galco shares to the public . . . . In view of the totality of the circumstances, this court concludes that Amswiss and Woo would likely participate in future unlawful distributions and manipulation."[5]

The Meridian manipulation lasted from June 1971 to February 1972, when it was brought to an end by our suspension of trading in the stock. In 1969, Woo had refused to underwrite a public offering of Meridian stock, despite D'Onofrio's urgings, because the fast food area was no longer attractive and Meridian had "terrible" financial reports. However, Amswiss ultimately underwrote an offering of 60,000 shares of Meridian at $5 per

---

basis of his testimony. Nor have we drawn any adverse inferences from that testimony. Thus Woo's motions, and his request for oral argument, are denied.

[5] *S.E.C. v. D'Onofrio, supra,* at pp. 98,014, 98,015 and 98,019.

share pursuant to a claimed Regulation A exemption from the Securities Act's registration requirements. The underwriting agreement provided that 22,000 shares had to be sold by June 22, 1971, or the underwriting would be withdrawn and the proceeds returned to subscribers. By the required date, 22,600 shares had been sold, mostly to friends, relatives and acquaintances of D'Onofrio and of Leonard Cooper, Meridian's president. But most of these shares soon found their way to the same Swiss bank that had been utilized in the Galco manipulation. By the time this Commission suspended trading, the price of Meridian, "an insolvent and essentially worthless company," had been run up through controlled trading to $20 per share.

The court stated:

> "The evidence establishes . . . that Woo was not just negligent but . . . willfully aided and abetted the contrived stock trading. Woo did not merely overlook the unrealistic buy and sell orders and the suspicious price jumps in Meridian, he was aware of the plot to manipulate Meridian and knowingly and willfully joined the scheme to help it succeed. . . . The interrelationships of Woo, Cooper, D'Onofrio and both Cooper's and D'Onofrio's friends in the offering and later in the aftermarket trading reveal a well calculated plot that commenced with the underwriting itself. The . . . claim that Amswiss had only 'a merely mechanical role as executing broker in unsolicited transactions' is sheer pretense."[6]

In addition, the court had this to say about Woo's testimony:

> "I find that Woo was, to understate it, not a credible witness. As the Court observed several times during

---

[6] *S.E.C. v. Cooper, supra,* 402 F.Supp. at 522.

his testimony, it was difficult to determine whether his answers were founded on imagination, assumption or conjecture. Indeed, his own attorney acknowledged that portions of his testimony were so contradictory that some 'clarification' was required. Woo was ready with glib but implausible explanations for questionable transactions. A careful word-by-word reading of the trial transcript not only confirms the Court's observation at the time of trial, but reveals a calculated and cunning attempt by Woo, sophisticated in the ways of the securities market, to cover up his role as an active participant and an aider and abetter of D'Onofrio's practices. His entire course of conduct reflects a conscious purpose to obscure his knowing participation in D'Onofrio's fraudulent activities."[7]

IV

[4] Our staff maintains that the public interest requires that Woo be totally barred from any further role in the securities business. Woo, on the other hand, contends that the sanction imposed by the administrative law judge is too severe.

Manipulation strikes at the integrity of the pricing process on which all market participants rely. It was one of the practices at which the Securities Exchange Act was aimed.[8]

---

[7] *S.E.C. v. Cooper, supra,* 402 F.Supp. at 518.

[8] The Senate Committee report on that statute said:

"The purpose of the act is . . . to purge the securities exchanges of those practices which have prevented them from fulfilling their primary function of furnishing open markets for securities where supply and demand may freely meet at prices uninfluenced by manipulation or control." S. Rep. No. 1455, 73d Cong., 2d Sess., p. 81 (1934). See also the preambles to the Exchange and the Securities Acts and Section 2 of the Exchange Act.

Hence we agree with our staff that Woo's misconduct was extremely serious. He was a principal in two separate manipulations. His deliberately evasive testimony at the trial of the Meridian injunctive action is another disturbing factor. That "lack of candor" compounds the gravity of his offenses.[9]

Woo's basic contention is that his conduct since 1971 demonstrates that he no longer poses any threat to the investing public. Amswiss has terminated all underwriting activities and virtually all of its retail accounts. At present, it is primarily a third market trading firm. Answiss's co-owner, Barry Finkelstein, is chiefly responsible for the firm's trading. Woo handles back office, compliance, banking and financial matters.

Woo asserts that since the time of his admitted misconduct, he and Amswiss have established an unblemished record of compliance with regulatory requirements. Numerous witnesses testified to Woo's good character, honesty and reliability. Much was said about Amswiss's unique marketmaking function, and about Amswiss's need for Woo.

But this evidence is seriously undercut by Woo's 1975 testimony in the Meridian injunctive action which the court characterized as "a calculated and cunning attempt . . . to cover up his [prior derelictions]." That characterization precludes us from viewing Woo as completely rehabilitated. Hence we find it impossible to take as sanguine a view as he himself does of the prospects for his future honesty.

Nevertheless, we think it unnecessary to bar Woo forever from all segments of the brokerage business, or

---

[9] See, e.g., *Thomas D. Conrad, Jr.,* 44 S.E.C. 725, 731-732 (1971); *John G. Abruscato,* 43 S.E.C. 209, 214 (1966).

from ever again exercising a supervisory role therein. Consequently, we shall impose a bar but provide that, after 18 months, Woo may return to the business. However, in view of his prior misconduct, such return may not be in any position directly or indirectly connected with the underwriting or retail sale of securities. Nor may Woo have any role in setting the prices at which securities are quoted or traded, or engage in the actual trading of securities.

We also consider it unnecessary to require that Woo dispose of his interest in Amswiss during his 18-month period of total exclusion. Hence, [5] we shall permit him to retain his Amswiss stock. We shall also permit him to collect dividends on that stock. However, during his period of total exclusion, Woo may not:

(A) Collect any salary from Amswiss; or

(B) Participate in any way (managerial or non-managerial) in Amswiss's activities.

V

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS and EVANS); Commissioner POLLACK not participating.

/s/ George A. Fitzsimmons
Secretary

---

[6]

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 13982 / September 22, 1977
Admin. Proc. File No. 3-4733

In the Matter of

GLENN WOO
1 Exchange Place
Jersey City, New Jersey

ORDER IMPOSING REMEDIAL SANCTION

On the basis of the Commission's opinion issued this day, it is

ORDERED that Glenn Woo be, and he hereby is, barred from being associated with any broker or dealer with the proviso that, after 18 months, he may become so associated with the underwriting or retail sale of securities, and which does not involve the setting of prices at which securities are quoted or traded or the actual trading of securities; and it is further

ORDERED that the bar hereby imposed shall not preclude Woo from retaining his stock interest in Amswiss International Corp. during his 18-month period of total exclusion and collecting any dividend thereon; but it is further

ORDERED that Woo be, and he hereby is, precluded during said 18-month period from:

(A) Collecting any salary from Amswiss International Corp., or

(B) Participating in any way (managerial or non-managerial) in the activities of that firm.

By the Commission

/s/ George A. Fitzsimmons
Secretary

APPENDIX D

SECURITIES EXCHANGE ACT OF 1934

Section 15(b)(6) of the 1934 Act, 15 U.S.C. § 78o(b)(6), provides:

> The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.

Section 15(b)(4) of the 1934 Act, 15 U.S.C. § 78o(b)(4), referred to in Section 15(b)(6), provides:

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent

concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this sub-

paragraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if –

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer.

No. 78-1571

In the Supreme Court of the United States

OCTOBER TERM, 1978

GLENN WOO, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

DAVID FERBER
Solicitor to the Commission

MICHAEL K. WOLENSKY
Assistant General Counsel

LINDA D. FIENBERG
Special Counsel

PHILIP H. BECKER
Attorney
Securities and Exchange Commission
Washington, D.C. 20549

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1571

GLENN WOO, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-2a) is reported at 590 F.2d 356. The opinion and order of the Securities and Exchange Commission (*id.* at 5a-12a) are reported at 13 S.E.C. Docket 147.

JURISDICTION

The judgment of the court of appeals was entered on January 15, 1979. A petition for rehearing was denied on February 12, 1979. The petition for a

writ of certiorari was filed on April 13, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals properly enforced a remedial order of the SEC prohibiting petitioner from associating with any broker-dealer.

STATEMENT

Under Section 15(b)(6) of the Securities Exchange Act of 1934, 15 U.S.C. 78*o*(b)(6), the Commission may, after notice and opportunity for hearing, enter sanctions against any person associated or seeking to become associated with a broker or dealer if such a person has willfully violated the federal securities laws and the sanction is in the public interest. Petitioner is an officer and a principal owner of Amswiss, a broker-dealer registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78*o*(b). On September 22, 1977, the Commission[1] entered an order barring petitioner from association with any broker or dealer, provided that after 18 months petitioner could become so associated in a position not connected, directly or indirectly, with the underwriting, retail

[1] The Commission instituted the instant proceeding on September 16, 1975 (A. 1). ("A." refers to the appendix in the court of appeals.) Public hearings were held before an administrative law judge, who issued a decision and order on September 8, 1976 (A. 57). This decision was appealed to the Commission (A. 65).

sales, or trading of securities, and not involving the actual trading of securities or the setting of prices at which securities are traded or quoted (Pet. App. 13a).

The Commission's order instituting proceedings was based on petitioner's violations of the federal securities laws, as established by the district court after a trial on the merits in an action for injunctive relief. *SEC* v. *Cooper*, 402 F. Supp. 516 (S.D.N.Y. 1975). The district court found that petitioner participated both as underwriter and broker in a protracted scheme to manipulate the market price of the securities of Meridian Fast Food Services, Inc., an insolvent company. As a result of this scheme, the market price per share of those securities increased fourfold. *Id.* at 518-520. Petitioner admitted the allegations against him. Thus, the only questions that the Commission considered were whether the public interest required the imposition of a sanction and, on determining that it did, what sanction should be imposed.

Petitioner offered character testimony to the effect that, subsequent to his proven misconduct, he reformed and became a valuable member of the investment community. Both the administrative law judge (A. 34) and the Commission (Pet. App. 11a) stated that the agency's consideration of the public interest need not be limited to petitioner's claim of character reform, and that the agency may consider the gravity of his past misconduct. Specifically, they considered the market manipulation by petitioner that was the

subject of the proceeding and petitioner's participation in another market manipulation. See *SEC* v. *D'Onofrio,* [1975-1976 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,201 (S.D. N.Y. 1975). In *D'Onofrio,* petitioner claimed he was innocent. After a trial the district court found that petitioner had been a major participant in a scheme to distribute worthless securities to the investing public, and to manipulate the price of the securities to accomplish the scheme. *Id.* at 98,015-98,019. In both *Cooper* and *D'Onofrio,* which were decided just a few weeks before this proceeding was instituted, the courts found that petitioner, if not enjoined, would continue to violate the securities laws. And in *Cooper,* the district court stated that petitioner's "entire course of conduct reflects a conscious purpose to obscure his knowing participation in * * * fraudulent activities" and that petitioner's testimony before the court was a "calculated and cunning attempt * * * to cover up his [prior derelictions]." 402 F. Supp. at 518.

The Commission, in enumerating the public interest considerations in support of its sanction, stated that petitioner's knowing and well-calculated participation in two separate schemes to manipulate the securities market so as to sell worthless securities at an excessive price struck "at the integrity of the pricing process on which all market participants rely" (Pet. App. 10a) and was the very type of practice sought to be remedied by the Securities Exchange Act. It noted also that the gravity of his offenses was compounded by petitioner's "deliberately evasive

testimony" (*id.* at 11a) before the district court. The Commission accordingly gave little weight to petitioner's evidence of character reform; it found that the public interest supported the sanction it imposed. The court of appeals affirmed, stating that the issues presented for review did not warrant an opinion (Pet. App. 1a-2a).

ARGUMENT

The decision of the court of appeals is correct and raises no issue that warrants review by this Court.

The question raised involves the application of settled statutory guidelines to uncontested facts.[2] Judicial review is limited to determining whether the agency's decision has warrant in the record and a reasonable basis in law. *E.I. duPont de Nemours & Co.* v. *Collins,* 432 U.S. 46 (1977); *Butz* v. *Glover Livestock Commission Co.,* 411 U.S. 182 (1973). As this Court has recognized, " 'the relation of remedy to policy is peculiarly a matter for administrative competence.' " *American Power & Light Co.* v. *SEC,* 329 U.S. 90, 112 (1946). And an agency vested by statute with broad discretion may impose that sanction it deems best to achieve the statute's objectives. See

---

[2] As the facts alleged were admitted by petitioner, the standard of proof by which those facts were established is not at issue here. Therefore, the "clear and convincing" standard of proof, which the District of Columbia Circuit held to be applicable to an administrative determination of fraud under narrowly defined circumstances, has no relevance to this case. See *Collins* v. *SEC,* 562 F.2d 820 (1977).

Butz v. *Glover Livestock Commission Co.*, *supra*, 411 U.S. at 188. The Commission's opinion set out considerations fully supporting its order barring petitioner from all aspects of the securities business for 18 months, and from certain activities thereafter. These considerations include the egregious nature of the petitioner's misconduct, the questionable prospects of his future honesty, and the deliberately evasive conduct before the district court (Pet. App. 10a-12a). The Commission's sanction had justification in fact and did not constitute an abuse of its discretion. See also *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635-636 (1967).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

DAVID FERBER
Solicitor to the Commission

MICHAEL K. WOLENSKY
Assistant General Counsel

LINDA D. FIENBERG
Special Counsel

PHILIP H. BECKER
Attorney
Securities and Exchange Commission

JUNE 1979

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 294557 417